

### **REMARKS**

The Office Action mailed July 1, 2005 first included a requirement of election of a single species for prosecution. The Examiner identified groups I-IV and memorialized a provisional election without traverse made by Applicant's previous counsel of Group I, associated with claims 1-4, 6-10, 12-14 and 18-26. Consequently, claims 5, 11, and 15-17 were withdrawn from examination by the Examiner. The Examiner then objected to the Specification. Claim 14 was rejected as being indefinite. Claims 1-4, 6, 8-10, 12, 14, 18, 19 and 22-26 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No.: 5,810,253 to Ohayon (hereinafter "Ohayon"). Claims 7 and 13 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ohayon in view of U.S. Patent No. 6,805,306 to Huang (hereinafter "Huang"), or U.S. Patent No.: 4,846,003 to Marquiss (hereinafter "Marquiss"). Claims 20 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ohayon in view of U.S. Patent No.: 5,932,204 to Joshi (hereinafter "Joshi").

By this paper, claims 1, 8, 14, 22, and 24 are amended, claim 2 is canceled, and claims 5, 11, and 15-17 are withdrawn; as a result, claims 1, 3, 4, 6-10, 12-14, and 18-26 are now pending in this application.

### **Affirmation of Election**

Restriction to one of the following Groups was required: Group I: Figures 1-1a; Group II: Figures 2-2a; Group III: Figure 3; and Group IV: Figures 4-4c. As provisionally elected by Applicants former representative, Mr. Koering, on June 23, 2005, Applicant affirms election of prosecution of the invention of Group 1, corresponding to claims 1-4, 6-10, 12-14, and 18-26. The claims of the non-elected invention, claims 5, 11, and 15-17 were withdrawn by the Examiner. Applicant reserves the right to later file continuation or divisional applications having claims directed to the non-elected inventions.

### **Information Disclosure Statement**

Applicant submits herewith an Information Disclosure Statement and a 1449 Form. Applicant respectfully requests that initialed copies of the 1449 Forms be returned to Applicants' Representative to indicate that the cited references have been considered by the Examiner.

### **Specification**

The Examiner objected to the Specification as failing to provide antecedent basis for the terms "the first release" and "a second boost release." Claim 2 has been canceled by this Amendment.

### **§112 Rejection of Claim 14**

Claim 14 was rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention as having insufficient antecedent basis. The dependency of this claim has been amended to provide proper antecedent basis. Applicant respectfully requests withdrawal of this rejection.

### **§102 Rejection of the Claims**

Claims 1-4, 6, 8-10, 12, 14, 18, 19, and 22-26 were rejected under 35 USC §102(b) as being anticipated by Ohayon. As the Examiner is aware, in order for a reference to anticipate a claim under 35 U.S.C. §102(b), "each and every element as set forth in the claim [must be] found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), cited in MPEP §2131. The MPEP further clarifies that "[t]he identical invention must be shown in as complete detail as is contained in the claim." MPEP §2131, quoting *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). As amended herein, claims 1-4, 6, 8-10, 12, 14, 18, 19, and 22-26 are not anticipated by Ohayon. Applicants thus respectfully request withdrawal of this rejection and allowance of the claims as presented herein.

By this Amendment, claim 1 was amended to state that the claimed devices comprise "means for controllably releasing a predetermined amount of the volatile substance," and that such means "transport" such an amount "through the housing to the discharge opening" from

whence it is dispensed "toward and onto an emanator." Claim 1, supra. As seen in Figures 1 and 1(a) of the present Application, a volatile substance dispensed from the reservoir is transported through the housing to a discharge opening that is not aligned with the discharge hole of the reservoir. In contrast, no such transport is conducted in Ohayon since, in Ohayon, the discharge hole of the fluid reservoir is taught to be coaxial with the discharge opening of the housing. Further, in Ohayon, the fluid seal is taught to be only about the discharge hole of the reservoir, thus preventing effective transportation of fluids as allowed by the seals 22 illustrated in Figures 1 and 1(a) of the present invention.

Similarly, claim 24 has been amended to state that the volatile substance is driven until released through a discharge opening. Claim 24, supra. Since no such step is provided in the passive, drip-based dispensation taught in Ohayon. Having thus failed to teach each and every element of independent claims 1 and 24, Applicants respectfully request withdrawal of this rejection and allowance of claims 1-4, 6, 8-10, 12, 14, 18, 19, and 22-26.

### **§103 Rejection of the Claims**

Claims 7 and 13 were rejected under 35 USC §103(a) as being unpatentable over Ohayon in view of Huang or Marquiss. Claims 20 and 21 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ohayon in view of Joshi. The Examiner's view was stated to be that Huang and Marquiss illustrate electric operation of a plunger, and that Joshi taught the use of a heating element. As a result, since, as illustrated above, Ohayon fails to teach each and every element of the rejected claims, these combinations similarly fail to teach each and every element of the rejected claims. Applicants thus respectfully request withdrawal of this rejection and allowance of the rejected claims.

### **Conclusion**

Applicant respectfully submits that the claims are in condition for allowance and earnestly requests notification to that effect. The Examiner is invited to telephone Applicant's attorney (801-978-2186) to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-3586

Respectfully submitted,

ASHOK V. JOSHI ET AL.

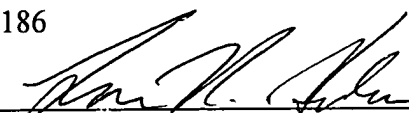
By their Representatives,

801-978-2186

Date

Jan. 3, 2006

By




Loren R. Hulse

Reg. No. 46,784

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 3 day of January, 2006.

Loren R. Hulse

Name



Signature